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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,938	10/07/2003	Kim J. Dato	JDATO.001DV1	6022

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EXAMINER

HAUGLAND, SCOTT J

ART UNIT PAPER NUMBER

3654

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/680,938

Applicant(s)

DATO ET AL.

Examiner

Scott Haugland

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-31, 33-36, 38-54 and 58-61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-31, 33-36, 38-54 and 58-61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/9/05 has been entered.

Allowable Subject Matter

Upon further consideration, the previously indicated allowability of claim 57 is withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 28-31, 33-36, and 38 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The originally filed application does not disclose first and second rows of spools offset from one another in at least two dimensions as recited in claim 28, line 14 and claim 36, line 2. The originally filed application does not disclose an offset (of the rows of spools) permitting the depth of the housing to be less than the sum of the diameter of two of the spools as recited in claim 36.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 28-31, 33-36, 38, 40-43, 45-50, 54, 60, and 61 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The language "offset from one another in at least two dimensions" of claim 28, lines 13-14 is unclear. Based on the elaboration in dependent claim 36, it appears that this language is referring to an arrangement of spools in the Fig. 9 embodiment such that the plane containing the axis of a spool in one row (the rows extending substantially vertically in Fig. 9) and the axis of the nearest spool in the other row is not parallel to the lower and upper sides of the housing (which are substantially horizontal in Fig. 9).

It appears that "said at least portion" in claim 40, lines 5-6 should be "said portion".

The language of claim 45, lines 8-11 is unclear since the turns of ribbon do not exist until the ribbon is wound on the spools. Thus, there is no radius of the turns

before the ribbon is placed on the spools. The radius of the ribbon to which this language appears to refer is the radius of curl of the ribbon.

Claim 54 is unclear since it is not clear how a spindle can be part of a recess. This language has been interpreted as requiring the spindle elements to be in the recess.

In claim 60, lines 11-13 and claim 61, lines 11-13, "the radius of said pre-curved ribbon after said pre-curved ribbon is curved yet before it is wound onto said at least one spool" lacks sufficient antecedent basis since it is not inherent in the spool of pre-curved ribbon that the ribbon has a radius before it is wound onto the spool.

The language of claim 61, lines 14-16 appears inaccurate since the disclosed ribbon is passed through a curling mechanism before it is dispensed (and before it is wound).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 40-42, 51-54, 59 are rejected under 35 U.S.C. 102(b) as being anticipated by Cayer (U.S. Patent No. 4,369,929).

Cayer discloses a dispenser for spooled materials comprising a housing element 20, 50 having a recess formed therein, a plurality of spools of material 12-15 disposed

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substantially within the recess, and a plurality of apertures 30-33 disposed in proximity to the spools through which the materials are dispensed. Cayer discloses forming the dispenser of plastic (col. 3, lines 21-23) which implies a polymeric material. The material on the spools is pre-curved since it is curved before being dispensed as a result of being wound on the spools.

With regard to claims 40-42, the apparatus disclosed by Cayer is equivalent to that formed by the claimed process. E.g., the structure disclosed by Cayer is the same as one produced by winding (and, thus curling) material onto a first spool having a radius substantially identical to a second spool that is one of the spools disclosed by Cayer, and unwinding the material from the first spool and winding it onto the second spool. The method steps recited do not distinguish the resulting product from that disclosed by Cayer.

With regard to claim 51, the handle 45 does not retain cap element 50 on the housing, but only aligns it as evidenced by the fact that the cap may be removed by lifting the cap upwards. The cap is not retained by any structure projecting out of the recess.

With regard to claim 54, the spindles 26, 52 of Cayer are seen to be formed as part of the recess to the same extent as those of the application since they extend into the recess.

With regard to claim 59, the housing elements maintain the spools in alignment without the use of the partitions 40-43. Note the space between the rolls of material and the partitions in Figs. 1, 2, and 4. Alignment is maintained by spindles 26, 52. The

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apparatus of Cayer is capable of use for dispensing ribbon that is curled by a curling mechanism before being placed on a spool.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28, 35, and 36 are rejected under rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer.

Cayer is described above.

Cayer does not disclose that the housing has a depth that is less than both a width and a length of the housing and that the length, width, and depth of the dispenser are unequal.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the housing of Cayer so that its depth is less than its width and length or so that the length, width, and depth are unequal since the precise shape of the housing is clearly not critical to the operation of the dispenser (as evidenced by the substantial difference in shape of the disclosed embodiments). It would have been obvious to make such changes at least for aesthetic reasons. The rows of spools appear to be offset to same extent as those of disclosed by Applicants.

Claims 29-31, 33, 34, 43-49, 60, and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer in view of Goldstein (U.S. Patent No. 5,407,417).

Cayer is described above.

Cayer does not disclose quantities of curled ribbon disposed on the spools in a helical lay pattern.

Goldstein teaches storing a quantity of ribbon on a spool by winding it in a helical lay pattern on the spool.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Cayer with spools containing quantities of curled ribbon disposed on the spools in a helical lay pattern as taught by Goldstein to provide for convenient storage and dispensing of ribbon.

With regard to claims 33 and 47, it would have been obvious to fully utilize the spools when providing spools of helically wound ribbon to avoid waste of space and materials (e.g., spool and packaging material) in accordance with the teachings of Cayer and Goldstein. The ribbon of the resulting dispenser would traverse substantially all of the length of the apertures during unwinding.

With regard to claim 44, it would have been obvious to use the modified device of Cayer to store ribbons that differ in at least one attribute since Cayer teaches storing a variety of materials and it is common to require a supply of different ribbons. The curl radius is determined before material is wound onto the spools since the radius of the spools determines the curl radius.

With regard to claims 44, 45, 60, and 61, the spools necessarily have a radius similar to the curl radius of the ribbon since the ribbon has a curl resulting from being wound on the spools.

Claims 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer as applied to claim 28 above, and further in view of Brown (U.S. Patent No. 987,952).

Cayer does not disclose that the distal portions of the ends of the spools do not have ribbon wound on them.

Brown teaches forming a spool for web material with distal ends (see Fig. 2) that do not have material wound on them.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the spools of Cayer with distal ends that do not have material wound on them as taught by Brown to facilitate retaining of material on the spools without interference with sides of the housing that encloses the spools.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer (U.S. Patent No. 4,369,929) in view of Goldstein (U.S. Patent No. 5,407,417) and Schwartz (U.S. Patent No. 3,948,455).

Cayer is described above.

Cayer does not disclose ribbon wound onto said spools in a substantially helical pattern or that one of the housing elements has at least a portion that is substantially transparent.

Goldstein teaches storing a quantity of ribbon on a spool by winding it in a helical lay pattern on the spool.

Schwartz teaches providing a dispenser for wound ribbon with a transparent portion to enable a user to view the ribbon in the dispenser and determine the quantities remaining.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide Cayer with spools containing quantities of curled ribbon disposed on the spools in a helical lay pattern as taught by Goldstein to provide for convenient storage and dispensing of ribbon.

It would have been further obvious to make a portion of the dispenser transparent as taught by Schwartz to enable a user to view the ribbon in the dispenser and determine the quantities remaining.

The structure of the spools of curled ribbon of the modified apparatus of Cayer is the same as the spools of ribbon formed by winding ribbon onto the spools after a portion of the ribbon has been curled.

Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer in view of Goldstein as applied to claim 45 above, and further in view of Brown.

Cayer does not disclose that the distal portions of the ends of the spools do not have ribbon wound on them.

Brown teaches forming a spool for web material with distal ends (see Fig. 2) that do not have material wound on them.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the spools of Cayer with distal ends that do not have material wound on them as taught by Brown to facilitate retaining of material on the spools without interference with sides of the housing that encloses the spools.

Claim 58 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cayer in view of Schwartz.

Cayer is described above.

Cayer does not disclose that the dispenser is made of a transparent material.

Schwartz teaches providing a dispenser for wound ribbon with a transparent portion to enable a user to view the ribbon in the dispenser and determine the quantities remaining.

It would have obvious to one having ordinary skill in the art at the time the invention was made to make the dispenser transparent as taught by Schwartz to enable a user to view the ribbon in the dispenser and determine the quantities remaining.

The modified dispenser of Cayer is capable of use for dispensing pre-curved ribbon which maintains at least some of said pre-curl after being dispensed. In addition, the materials disclosed for dispensing by Cayer inherently retain curl after being dispensed.

Note that there is no need in the device of Cayer for any curling apparatus.

Response to Arguments

Applicants' arguments filed 6/9/05 have been fully considered but they are not persuasive.

With regard to Applicants' assertion that the spindle elements could be recesses formed in the housing (p. 11, par. 1 of Applicants' remarks), it is noted that there is no disclosure of this structure.

Applicants argue that there is no teaching in Cayer of a housing having the relationship between depth and other dimensions recited in claim 28. However, variation of the shape and relative sizes of the sides of the housing of Cayer is seen to have been obvious to accomplish any desired aesthetic effect or to fit in a particular space. It is noted that the relative dimensions are clearly not critical to operation of the dispenser of Cayer as can be seen from the significant difference in shape between the different embodiments of Cayer and as would be apparent to an ordinary artisan based on an understanding of the operation of the dispenser.

Applicants argue (p. 12 of the remarks) that the amendment to claim 40 overcomes the 102(b) rejection based on Cayer. However, it is noted that the claim is directed to an apparatus. The structure resulting from the recited method steps is seen to be the same as that disclosed by Cayer as discussed in the rejection of claim 40 above. The time at which the ribbon is curled does not structurally distinguish Applicants device over Cayer or modifications of Cayer. Similar arguments apply to claims 59, 39, 44, and 45.

Applicants argue (p. 12), regarding claim 51, that Cayer teaches only structures projecting out of the recess formed by the housing for retaining a cap element. However, the handle projecting from the housing recess in Cayer does not retain the cap element. The weight of the cap retains it. It would be retained on the housing in the absence of the handle.

With regard to Applicants' assertion that the references do not teach maintaining curl in material after it is dispensed, it is noted that the dispensers of Cayer, Schwartz, and other references of regard are capable of dispensing material that retains curl after being dispensed. In addition, the materials disclosed by Cayer inherently retain curl after being dispensed from a roll.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Haugland whose telephone number is (571) 272-6945. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sjh
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6/23/05

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